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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 760

ARKANSAS FUEL OIL COMPANY, APPELLANT,

vs.

STATE OF LOUISIANA EX REL. HYMAN MUSLOW

APPEAL FROM COURT OF APPEAL, SECOND CIRCUIT, STATE OF
LOUISIANA

FILED FEBRUARY 7, 1938.

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[fol. 1]

IN FIRST JUDICIAL DISTRICT COURT, CADDO PARISH, LOUISIANA

No. 66,478

STATE EX REL. HYMAN MUSLOW

VS.

LOUISIANA OIL REFINING CORPORATION

PETITION—Filed May 20, 1935

To the Honorable Judges of the First Judicial District Court in and for the Parish of Caddo, State of Louisiana:

The petition of the State of Louisiana on the relation of Hyman Muslow, a resident citizen of your said Parish and State, with respect represents:

1

That on April 18, 1933, he entered into a contract with A. C. Best and Sherman G. Spurr, residents of Milwaukee, Wisconsin, the last record owners of said property, whereby your petitioner for valuable consideration was given an oil and gas lease covering the following described property, to-wit:

Beginning at the Northeast corner of the Southwest Quarter of the Southwest Quarter of the Southeast Quarter (S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$) Section 35, Township 21 [fol. 2] Range 16, thence South 660 feet, thence along South boundary of said section due west 1650 feet, thence North 918.82 feet, thence due East 841.50 feet, thence South to a place 660 feet North of the southern section line, thence East to place of beginning, containing $37\frac{1}{2}$ acres.

2

That under the terms of said lease the said Hyman Muslow had full right and authority to operate a well on said land and run the oil therefrom and that the proceeds derived from said oil should be divided seven-eighths ($\frac{7}{8}$) to Hyman Muslow and one-eighth ($\frac{1}{8}$) to A. C. Best and Sherman G. Spurr, as per said lease contract recorded in

Conveyance Book 315, page 704, copy of which is hereto attached and made part hereof.

That the said A. C. Best and Sherman G. Spurr, the last record owners of said property acquired same by deed translativ of property from the Ackerman Oil Company, on May 24, 1927, which was duly recorded in Conveyance Book 246, page 161, copy of which is attached hereto and made part hereof.

Petitioner avers that in accordance with said contract he entered upon said property and equipped the well thereon with a standard rig and pumping equipment and [fol. 3] produced oil for several months, which oil the said Hyman Muslow sold and delivered to the Louisiana Oil Refining Corporation.

Petitioner further avers that notwithstanding the said oil was sold and delivered to said defendant company, that he furnished a copy of said lease contract and deed of the last record owner, and has made repeated demands upon said company for payment for said oil it has refused to do so without any right or authority so to do.

Petitioner further avers that the said defendant having purchased the oil from your petitioner is estopped to question want of authority of your petitioner to sell said oil, which oil was delivered to defendant company monthly between July 1, 1933 and August 24, 1934, which plea of estoppel is here specially made.

Petitioner further avers that by reason of the illegal and unlawful withholding of payment for said oil your petitioner is entitled to have interest at the rate of 5% per annum from July 12, 1934, until paid, together with One Hundred Fifty (\$150.00) Dollars attorney's fees which petitioner has been required to pay to employ an attorney in this case.

[fol. 4]

8

Petitioner avers that the amount of oil sold and delivered by your petitioner to the said defendant Nine Hundred Fifty (\$950.00) Dollars plus legal interest from July 12, 1934, until paid; the specific dates and quantities of oil so run is now in the possession of defendant company and relator does not know the exact dates and amounts of oil as run but that the value of the oil so run is not less than Nine Hundred Fifty (\$950.00) Dollars.

9

Petitioner further avers that under the provisions of Act 64 of 1934 he made due and proper demand of the defendant company for payment of said oil but that the said defendant company refused to pay for the same and that your petitioner is entitled to writ of mandamus, as provided in said act, compelling defendant to make payment for the oil.

Wherefore, premises and annexed affidavit considered, relator prays that alternative writ of mandamus issue herein, directed to the Louisiana Oil Refining Corporation, a foreign corporation authorized to do business in the State of Louisiana, and domiciled in the City of Shreveport, commanding it to pay to your petitioner the sum of Nine Hundred Fifty (\$950.00) Dollars with legal interest from July 12, 1934, until paid, or to show cause to the contrary on such a day and at such an hour as the court may direct.

[fol. 5] Relator further prays that there be judgment in favor of your petitioner and against the defendant in the sum of One Hundred Fifty (\$150.00) Dollars for attorney's fees and willful neglect and disregard of the statutory duty of the defendant to pay your respondent for the oil so produced, sold and delivered to it.

Relator further prays for all costs, general and equitable relief.

John B. Files, Attorney for Relator.

Duly sworn to by Hyman Muslow. Jurat omitted in printing.